

248712

STATE OF SOUTH CAROLINA

(Caption of Case)

Southern Bread, LLC, Complainant/Petitioner v.
 South Carolina Electric & Gas Company, Defendant/
 Respondent

BEFORE THE
 PUBLIC SERVICE COMMISSION
 OF SOUTH CAROLINA

COVER SHEET

DOCKET

NUMBER: 2013 - 435 - E

(Please type or print)

Submitted by: William R. Padget

SC Bar Number: 72579

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Other:

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition☐ Request for item to be placed on Commission's Agenda expeditiously☐ Other:

| INDUSTRY (Check one) | NATURE OF ACTION (Check all that apply) | | |
|--|--|--|--|
| <input checked="" type="checkbox"/> Electric | <input type="checkbox"/> Affidavit | <input type="checkbox"/> Letter | <input type="checkbox"/> Request |
| <input type="checkbox"/> Electric/Gas | <input type="checkbox"/> Agreement | <input checked="" type="checkbox"/> Memorandum | <input type="checkbox"/> Request for Certification |
| <input type="checkbox"/> Electric/Telecommunications | <input type="checkbox"/> Answer | <input type="checkbox"/> Motion | <input type="checkbox"/> Request for Investigation |
| <input type="checkbox"/> Electric/Water | <input type="checkbox"/> Appellate Review | <input type="checkbox"/> Objection | <input type="checkbox"/> Resale Agreement |
| <input type="checkbox"/> Electric/Water/Telecom. | <input type="checkbox"/> Application | <input type="checkbox"/> Petition | <input type="checkbox"/> Resale Amendment |
| <input type="checkbox"/> Electric/Water/Sewer | <input type="checkbox"/> Brief | <input type="checkbox"/> Petition for Reconsideration | <input type="checkbox"/> Reservation Letter |
| <input type="checkbox"/> Gas | <input type="checkbox"/> Certificate | <input type="checkbox"/> Petition for Rulemaking | <input type="checkbox"/> Response |
| <input type="checkbox"/> Railroad | <input type="checkbox"/> Comments | <input type="checkbox"/> Petition for Rule to Show Cause | <input type="checkbox"/> Response to Discovery |
| <input type="checkbox"/> Sewer | <input type="checkbox"/> Complaint | <input type="checkbox"/> Petition to Intervene | <input type="checkbox"/> Return to Petition |
| <input type="checkbox"/> Telecommunications | <input type="checkbox"/> Consent Order | <input type="checkbox"/> Petition to Intervene Out of Time | <input type="checkbox"/> Stipulation |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> Discovery | <input type="checkbox"/> Prefiled Testimony | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Water | <input type="checkbox"/> Exhibit | <input type="checkbox"/> Promotion | <input type="checkbox"/> Tariff |
| <input type="checkbox"/> Water/Sewer | <input type="checkbox"/> Expedited Consideration | <input type="checkbox"/> Proposed Order | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Administrative Matter | <input type="checkbox"/> Interconnection Agreement | <input type="checkbox"/> Protest | |
| <input type="checkbox"/> Other: _____ | <input type="checkbox"/> Interconnection Amendment | <input type="checkbox"/> Publisher's Affidavit | |
| | <input type="checkbox"/> Late-Filed Exhibit | <input type="checkbox"/> Report | |

Print Form

Reset Form



William R. Padget, Esquire
bpadget@finkellaw.com

Reply to Columbia Office

January 27, 2014

Via Hand Delivery:

The Honorable Jocelyn G. Boyd
Chief Clerk/Administrator
South Carolina Public Service Commission
101 Executive Center Drive
Columbia, SC 29210

RE: Southern Bread, LLC vs. South Carolina Electric and Gas Company
Case No.: 2013-435-E
Our File No.: 74350-47500
Complainant's Reply to Defendant's Motion for Judgment on the Pleadings

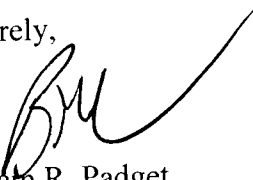
Dear Ms. Boyd:

Enclosed please find Complainant's Reply to Defendant's Motion for Judgment on the Pleadings which we are filing to apprise the Commission as to the extent of legal and factual issues in dispute between the parties. We are hereby serving the Defendant via hand delivery as evidenced by the attached letter and Certificate of Service. Please file the originals and return a clocked copy to us via our courier.

In accordance with Complainant's Motion to Extend Time to Respond to Defendant's Motion for Judgment on the Pleadings and Request a Hearing previously filed with this Commission, the Complainant expressly reserves its right to supplement this Reply once Southern Bread has had a full and fair opportunity to complete discovery.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



William R. Padget

WRP/cdh
Enclosures
cc: K. Chad Burgess, Esquire
Mitchell Willoughby, Esquire
Benjamin P. Mustian, Esquire
Jeffrey Nelson, Esquire

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William R. Padget, Esquire
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Reply to Columbia Office

January 27, 2014

Via Hand Delivery and E-mail:

K. Chad Burgess, Esquire
SCANA Corp.
220 Operation Way, MC-C222
Cayce, SC 29033

Mitchell Willoughby, Esquire
Benjamin P. Mustain, Esquire
Willoughby & Hoefer, P.A.
930 Richland Street
Columbia, SC 29202

RE: Southern Bread, LLC vs. South Carolina Electric & Gas Company
Case No.: 2013-435-E
Our File No.: 74350-47500

Counselors:

Enclosed please find Complainant's Reply to Defendant's Motion for Judgment on the Pleadings, which we are herewith serving upon you via hand delivery and contemporaneously filing with the Public Service Commission.

If you have any questions, please contact me. With kind personal regards, I remain

Sincerely,

William R. Padget

WRP/cdh

Enclosures

cc: Jeffery Nelson, Esquire

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| | | |
|---------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE PUBLIC SERVICE COMMISSION |
| |) | |
| COUNTY OF RICHLAND |) | DOCKET NO.: 2013-435-E |
| |) | |
| Southern Bread, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | CERTIFICATE OF SERVICE BY HAND |
| |) | DELIVERY |
| South Carolina Electric and Gas |) | |
| Company, |) | |
| |) | |
| Defendant |) | |
| |) | |

I, the undersigned, of the law offices of Finkel Law Firm, LLC, attorneys for Plaintiffs, do hereby certify that I have served all counsel of record on this date, January 27, 2014, in this action with a copy of the pleading(s) herein below specified, by hand delivery to the following address(es):

PLEADINGS: 1. *Complainant's Reply to Defendant's Motion for Judgment on the Pleadings*

COUNSEL:

K. Chad Burgess
 SCANA Corp.
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 Cayce, SC 29033

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 Benjamin P. Mustian
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 (803)765-2935


 Carl D. Miller

Columbia, South Carolina
 January 27, 2014

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2013-435-E

IN RE:

Southern Bread, LLC)
)
Complainant/Petitioner,)
)
v.)
)
South Carolina Electric & Gas Company,)
)
Defendant/Respondent.)
_____)

**COMPLAINANT’S REPLY
TO DEFENDANT’S MOTION
FOR JUDGMENT ON THE
PLEADINGS**

Complainant Southern Bread, LLC, by and through its undersigned counsel, submits this Reply in Opposition to Defendant South Carolina Electric & Gas Company’s (“SCE&G” or “Defendant”) Motion for Judgment on the Pleadings. In opposition to Defendant’s Motion, Complainant would respectfully show the following and requests that the Motion for Judgment on the Pleadings be denied.

BACKGROUND¹

Complainant, Southern Bread, LLC is a limited liability company organized and operating under the laws of the State of South Carolina and doing business in the State of South Carolina through its members, agents, servants and/or employees. Complainant contracted with Defendant to have permanent electricity provided to each of its following Panera Bread stores on the approximate dates:

¹ In accordance with Rule 12(c) these are the only facts to be properly considered at this stage. Complainant reserves the right to submit a comprehensive recitation of the applicable facts at the conclusion of discovery in accordance with Rule 12, SCRCP.

- a. 6080 Garners Ferry Road, Columbia, SC – on or about November 17, 2004;
- b. 2000 Sam Rittenberg Blvd., Charleston, SC – on or about November 17, 2005;
- c. 5070 International Blvd., North Charleston, SC - on or about June 8, 2006;
- d. 631 Promenade Place, Columbia, SC - on or about September 15, 2008; and
- e. 1311 Main Street, Summerville, SC - on or about November 8, 2010.

SCE&G's General Terms and Conditions for permanent electricity require that when two or more rate schedules for electricity are available for selection by a customer such as Complainant, Defendant will attempt to assist the customer to a reasonable extent in determining which schedule to select. Moreover, South Carolina Code Ann. Reg. 103-330 (2013) states that a provider of electricity to a new residential or commercial customer must provide to said customer within sixty days of application of service a clear and concise explanation of the available rate schedules for the class of service which for the customer applied. In addition, when more than one rate schedule is reasonably available to a customer, a provider of electricity must also provide a clear and concise summary of the existing rate schedules applicable to the customer's class of service at least once a year.

At the time of the Complainant contracting for permanent electricity at each of its respective Panera Bread stores and thereafter, Defendant had a duty and obligation to present to Complainant the option of selecting between SCE&G Rate Schedule 9 and Rate Schedule 20 and should have made efforts to assist Complainant in determining the proper rate in accordance with Defendant SCE&G's General Terms and Conditions. At no time during the contracting for permanent electricity at each respective Panera Bread stores or thereafter did Defendant provide any meaningful assistance, explanation, clarification, or summary of the rate schedules available to Complainant regarding the aforementioned Panera Bread stores in violation of Defendant

SCE&G's General Terms and Conditions and South Carolina Code Ann. Reg. 103-330. Further, Defendant failed to effectively provide Complainant the option to meaningfully select between Rate 9 and Rate 20, but instead selected a specific rate schedule by default without providing Complainant meaningful information to make an informed decision regarding the appropriate rate.

As a result of Defendant's failure to assist, consult, explain, and/or recommend to Complainant which rate schedule to select, or effectively provide Complainant the option to select between rate schedules, four of Complainant's Panera Bread stores were arbitrarily placed on Defendant's Rate 9 (the stores at 6080 Garners Ferry Road, 5070 International Blvd., 631 Promenade Place, and 1311 Main Street) and, at a later time, one store was placed on Defendant's Rate 20 (the store at 2000 Sam Rittenberg Blvd). Defendant's Rate 9 is an improper and inefficient rate schedule for the four Panera Bread stores owned by Complainant as compared to Rate 20. Complainant's four stores on Rate 9 have been overcharged and have been overpaying for electricity between the time they entered into their respective permanent electricity contracts with Defendant until September 2013 when Complainant became aware the rate schedules were improper through the investigation and questioning of Defendant conducted by Complainant's Managing Energy Consultant, James ("Jim") Crick. Upon completion of the investigation, the four Panera Bread stores were converted to Rate 20.

As a direct and proximate result of Defendant's failure to follow its own General Terms and Conditions and South Carolina law, four of Complainant's Panera Bread stores were arbitrarily and improperly placed on SCE&G's Rate 9 resulting in the overcharging and overpayment for electricity in the *estimated* collective amount of \$232,000.00.

LEGAL STANDARD FOR RULE 12(C) JUDGMENT ON THE PLEADINGS

A motion for judgment on the pleadings is governed by Rule 12(c) of the South Carolina Rules of Civil Procedure. Generally, “any party may move for judgment on the pleadings under Rule 12(c), SCRCPP. The motion will be sustained only where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated. A judgment on the pleadings against the plaintiff is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment.” *Lydia v. Horton*, 343 S.C. 376, 380 S.E.2d 102, 105 (Ct. App. 2000). (rev’d on other grounds). *See also Burbach Broadcasting Co. of Delaware v. Elkins Radio Corp.*, 278 F.3d 401 (D.S.C. 2002) (South Carolina District Court holding that a motion for judgment on the pleadings must be viewed under the same standard as a Rule 12(b)(6) motion to dismiss, “assum[ing] the facts alleged in the complaint are true and draw all reasonable factual inferences in [the non-moving party’s] favor.”). Further, “a judgment on the pleadings is a drastic procedure, and, is therefore not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle her to judgment. Moreover, the pleadings must be construed liberally to do substantial justice between the parties.” *McCurry v. Keith*, 312 S.C. 254, 255, 439 S.E.2d 861, 862 (Ct. App. 1994).

It is improper for a court to go beyond the pleadings on a Rule 12(c) motion for judgment on the pleadings. *See Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350, 353 (Ct. App. 2000) (“On review of the motion, the court may not consider matters outside the pleadings.”). If the parties raise issues outside of the pleadings “the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.” Rule 12(c), SCRCPP.

ARGUMENT

A. DEFENDANT’S MOTION IS PREMATURE.

As an initial matter, because Defendant’s Motion for Judgment on the Pleadings goes beyond the pleadings by incorporating documents and relies upon those documents to support its argument that the case is barred by the applicable statute of limitation, Defendant’s Motion is premature and must be treated as a Motion for Summary Judgment in accordance with Rules 12 and 56 of the South Carolina Rules of Civil Procedure. In accordance with the Hearing Examiner Directive dated December 5, 2013, Complainant and Defendant have until February 7, 2014 to complete all discovery. *See Hearing Examiner’s Directive* attached hereto as Exhibit A. As of the date of this memorandum, the parties have diligently conducted certain written discovery to date, but Complainant has a Second Set of Interrogatories and Requests for Production to Defendant outstanding and has recently inquired of SCE&G as to whether it will consent to the taking of a Rule 30(b)(6) deposition, but Complainant has not yet received responses to these requests for discovery. As such, Complainant is entitled to complete discovery before being required to respond to the Motion. *See e.g. Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991)(“This means . . . that summary judgment must not be granted until the opposing party has had **a full and fair opportunity to complete** discovery.”) (emphasis added).

B. ALL FACTUAL ALLEGATIONS OF THE COMPLAINT MUST BE TAKEN AS TRUE

As stated above, in a motion for judgment on the pleadings, the court assumes that all facts alleged by the plaintiff are true, and a judgment on the pleadings is not proper if there is an issue of fact raised by the complaint which, if resolved in favor of the plaintiff, would entitle him to judgment. *Lydia*, 343 S.C. at 380, 540 S.E.2d at 105 (Ct. App. 2000) (rev’d on other grounds). *See also Burbach Broadcasting Co. of Delaware*, 278 F.3d 401 (D.S.C. 2002) (South Carolina

District Court holding that a motion for judgment on the pleadings must be viewed under the same standard as a Rule 12(b)(6) motion to dismiss, “assum[ing] the facts alleged in the complaint are true and draw all reasonable factual inferences in [the non-moving party’s] favor.”).

In accordance with South Carolina law, Complainant has made certain factual allegations in its Complaint that must be taken by this Commission as true. First, Complainant has alleged that Defendant’s General Terms and Conditions for permanent electricity require that when two or more rate schedules for electricity are available for selection by a customer such as Complainant, Defendant shall attempt to assist the customer in determining which schedule to select. *See Complaint*, Paragraph 4, attached hereto as Exhibit B. Second, Complainant has alleged that pursuant to South Carolina Code Ann. Reg. 103-330 (2013) a provider of electricity to a new residential or commercial customer, such as Complainant, must provide to said customer a clear and concise explanation of the available rate schedules for the class of service which for the customer applied. Additionally, when more than one rate schedule is reasonably available to a customer, Defendant must also provide a clear and concise summary of the existing rate schedules applicable to the customer’s class of service at least once a year. *Complaint*, Paragraph 5. Third, Complainant has alleged that Defendant owed a duty to the Complainant and had an obligation to present the Complainant the option of selecting between Defendant’s Rate Schedule 9 and Rate Schedule 20 and that Defendant should have made efforts to assist Complainant in determining the proper rate in accordance with Defendant’s General Terms and Conditions. *Complaint*, Paragraph 7. Fourth, Complainant has alleged that at no time during the contracting for permanent electricity or since did Defendant provide any meaningful assistance, explanation, clarification, or summary of the rate schedules available to Complainant

in violation of Defendant's General Terms and Conditions and South Carolina Code Ann. Reg. 103-330. Complaint, Paragraph 8. Finally, Complainant has alleged that it did not become aware that four of its stores were on the improper rate until September 2013. Complaint, Paragraph 11.

While Defendant has denied Complainant's factual allegations in its Answer and disputes when Complainant had actual knowledge or reasonably should have known of the existence of an alternative rate schedule, the law is clear that for the purpose of deciding a motion for judgment on the pleadings, all plaintiff's factual allegation **must be taken as true**. Therefore, pursuant to Paragraph 11 of the Complaint, any alleged applicable statute of limitations could not begin to run until September 2013, when the Complainant has alleged it became aware of the existence of an alternative rate.

C. GENUINES ISSUES OF MATERIAL FACT EXIST

Genuine issues of material fact exist as to whether the Defendant ever attempted to assist or advise Complainant to a reasonable extent in determining which rate schedule to select and whether Defendant actually provided Complainant with a clear and concise explanation of the available rates, and therefore Defendant's Motion for Judgment on the Pleadings should be denied. Judgment on the pleadings and summary judgment are improper if there is a genuine issue of material fact. Likewise, all reasonable factual inferences must be drawn in the non-moving party's favor. *Burbach Broadcasting Co. of Delaware*, 278 F.3d 401 (D.S.C. 2002).

As previously stated, Complainant has alleged that Defendant has failed to assist it in selecting between multiple rates and has failed to provide it with an explanation of rates that would allow it to informatively select the most cost efficient rate for each of its stores. Complaint, Paragraphs 8 and 9. While Defendant has denied these allegations, it has provided no factual evidence to support its denial. Defendant claims that Complainant has had constructive

notice of its claims against Defendant since 2004 and every year since when Defendant claims to have provided Complainant with summaries of rate schedules. However, Defendant has failed to provide any factual evidence supporting this allegation and has even admitted that it does not have in its possession **any factual evidence** that supports this claim. *See Defendant's Motion for Judgment on the Pleadings*, Page 4 ("SCE&G does not maintain and is not in possession of the specific documents provided to Southern Bread upon initiation of electric service to its Panera Bread Store located at 6080 Garners Ferry Road."). Likewise, the Defendant alleges that Complainant had actual notice its claim had arisen in 2006 when Complainant switched its Sam Rittenberg Store from Rate 9 to Rate 20. *Def.'s Motion for Judgment on the Pleadings*, Page 4. Regardless of the reason why Complainant had the Sam Rittenberg store switched over to Rate 20 in 2006, again, Defendant has failed to provide **any factual evidence** that it provided Complainant with a clear and concise explanation of the rates in accordance with S.C. Reg. 103-330 or that it attempted to assist the Complainant in selecting between Rate 9 or Rate 20 as required by its own policy at that time. Therefore, a genuine issue of material fact exists as to whether Defendant actually provided Complainant with any documentation summarizing its rate options and as a result a genuine issue of material facts exists as to when Complainant's cause of action for reparations accrued which should be decided by a factfinder at a final hearing on the merits.

Additionally, without conceding Defendant provided any documentation, explanation, or advice regarding alternative rates, there is a genuine issue of material fact as to whether the summaries that were allegedly provided to Complainant, within 60 days after an application of service, and the annual summaries that are allegedly provided, actually comply with Reg. 103-330 and Defendant's own General terms and Conditions. There is also a genuine issue of

material to fact as to whether these documents allegedly provided to Complainant effectively put Complainant on notice of its cause of action for reparations. Defendant claims that Complainant had constructive knowledge of its claims in 2004 and actual knowledge of its claims no later than 2006 because at that time Complainant was aware that an alternative rate schedule existed. However, Complainant does not have actual or constructive knowledge of its claim for reparations when the documentation allegedly provided to it does not effectively inform the Claimant that there is a more efficient and available alternative rate. It is question for a factfinder at a final hearing on the merits whether such allegedly provided documentation amounted to putting the Complainant on notice that such a cause of action had accrued and whether it was sufficiently provided information to Complainant as required by South Carolina law. *See* S.C. Code Ann. 58-27-1510 (“every electrical utility shall furnish adequate, efficient, and reasonable service”); S.C. Code. Regs. 103-380 (“Each electrical utility shall provide the best possible service that can be reasonably expected from the facilities of that electrical utility. When the quality or quantity of service falls below what can be reasonably expected, the electrical utility shall, as soon as practicable, provide the proper service”).

Therefore, since genuine issues of material fact exist, Defendant’s motion for judgment on the pleadings should be denied.

D. COMPLAINANT’S CLAIMS ARE NOT BARRED UNDER THE DISCOVERY RULE

Complainant’s claims are not barred by the applicable statute of limitations as the Complainant did not have actual or constructive notice that a cause of action had accrued under the discovery rule. The applicable statute of limitations states that “all petitions concerning unreasonable, excessive, or discriminatory charges on which reparations orders may be made

must be filed with the commission and provided to the Office of Regulatory Staff within two years from the time the cause of action accrues.” S.C. Code Ann. § 58-27-960 (2014).

Generally, statute of limitations issues are for the fact finder, rather than the court, to resolve. *See Arant v. Kressler*, 327 S.C. 225, 229, 489 S.E.2d 206, 208 (1997) (stating when there is conflicting testimony regarding time of discovery of facts giving notice of a medical malpractice claim, the date of which discovery should have been made becomes an issue for a fact finder to decide.); *Santee Portland Cement Co. v. Daniel Intern. Corp.*, 299 S.C. 269, 384 S.E.2d 693 (1989) (rev’d on other ground) (stating that if there is conflicting evidence as to whether a claimant knew or should have known that they had cause of action, then it is a question for a fact finder at a hearing on the merits.). While the policy behind the statute of limitations is to protect the defendant from claims where evidence has been lost or destroyed, “[t]his concern must be balanced against a plaintiff’s interest in prosecuting an action and pursuing his rights. Plaintiffs should not suffer where circumstances prevent them from knowing they have been harmed.” *Santee Portland Cement Co.* 299 S.C. at 271, 384 S.E.2d at 694. “Statutes of limitation which are susceptible to judicial construction should not be applied mechanically but rather construed in the manner most consistent with both their underlying purpose and the requirements of substantial justice for all parties involved.” *Gattis v. Chavez*, 413 F. Supp. 33, 39 (D.S.C. 1976).

South Carolina Courts have adopted the discovery rule in evaluating statutes of limitation. *See Santee Portland Cement Co.*, 299 S.C. 269, 384 S.E.2d 693 (rev’d on other grounds). Under the discovery rule “[a] statute of limitations requiring action to be commenced within a time period after the person knew or by exercise of reasonable diligence should have known that he had a cause of action means that the injured party must act with some promptness

where facts and circumstances of the injury would put a person of common knowledge and experience on notice that some right of his had been invaded or that some claim against another party might exist. *Garner v. Houck*, 312 S.C. 481, 485, 435 S.E.2d 847, 849 (1993). This test is objective. *Maher v. Tietex Corp.*, 331 S.C. 371, 500 S.E.2d 204 (Ct. App. 1998).

1. Complainant had no actual or constructive notice of its claims against Defendant until September 2013.

Defendant concedes the discovery rule applies to this case. See Defendant's Motion for Judgment on Pleadings at 7. However, Defendant fundamentally misconstrues the proper application of the statute of limitations. Defendant contends that Complainant had constructive knowledge of its claims in 2004 and actual knowledge of its claims in 2006. As stated above, Complainant contends that it did not have notice of its claims until its Managing Energy Consultant contacted Defendant in September 2013. Complaint, Paragraph 11. Only after conducting an investigation and calculation of the other available rates of Defendant did the Complainant discover that it could and that it would be more beneficial to have all of its stores switched to Rate 20 and that it has been overcharged for electrical services since 2005. Complainant contends Defendant failed to provide the consultation required to make this determination previously. Again, in hearing a motion for judgment on the pleadings, the Commission must assume that all facts alleged by the plaintiff are true. Likewise, all reasonable factual inferences must be drawn in the non-moving party's favor. *Burbach Broadcasting Co. of Delaware v. Elkins Radio Corp.*, 278 F.3d 401 (D.S.C. 2002). Complainant contends that it has received no documentation of alternative rates or advice from Defendant regarding the proper rate for its stores. As stated above, Defendant has failed to provide any factual evidence to the contrary. While Complainant admits that it had its Sam Rittenberg store transferred to Rate 20 in 2006, Defendant has failed to provide evidence as to why that rate was switched over; the

communications, if any, that occurred between the parties about the benefits of Rate 20 as proposed to Rate 9; that it provided Complainant with any advice or information regarding the calculation of Rate 20 as required by its own policies and South Carolina law; that it informed Complainant of the possibility and benefits of having Complainant's other stores switched over to Rate 20; and that this in anyway put Complainant on notice that it had a claim for reparations. In fact, while Defendant claims that it is the responsibility of its customers to select between available rate schedules and that it does not assume responsibility to make the choice for the customer, the only information that it allegedly provides to its customers is an annual summary of its available rates. *See Summary of Non-Residential Electric Rates* attached hereto as Exhibit C. This information cannot possibly adequately advise a customer like the Complainant of which electrical rate is most efficient because this summary does not even provide a customer with the formulas used to calculate a customer's monthly costs under each respective rate.

Additionally, a customer who is contracting with Defendant for electrical power under Rate 20 who somehow through his or her own research becomes aware of the formula to calculate monthly Rate 9 is still not provided by the Defendant the monthly kilovolt-amperes ("kVA") consumption, which is a value required to calculate the customer's monthly costs under Rate 9. *See Monthly Account Summary* for Complainant while under Rate 20 showing kVA as zero "0" attached hereto as Exhibit D. Essentially, the Defendant claims it is solely the responsibility of their customers to investigate every possible rate available and how to calculate which rate is the most beneficial to them, yet they do not provide their customers the information required to do so. Even more disturbing, the Defendant actually misleads their customers by misrepresenting their customer's monthly kVA consumption as zero "0," which, if were true, would mean that a customer does not even qualify for Rate 20. *See* Def.'s Motion for Judgment

on the Pleadings, Page 2 (“Rate 20 ‘is available to any non-residential customer using the Company’s standard service for power and light requirements **and having a contract demand of 75 kVA or over.**’”) (emphasis added). Without accurate information regarding its monthly kVA consumption, Complainant was unaware that it was on an inefficient rate and that it was being overcharged for electrical services by the Defendant. Complainant did not know it even qualified for Rate 20 and it could not possibly calculate its costs under Rate 20. Complainant did not become aware that it possibly had a claim for reparations, and had no reason to become aware of such a claim until September 2013 when its Managing Energy Consultant began investigating and demanded Defendant conduct calculations using values that only they maintained to determine what the most cost efficient rate for each store is. Moreover, as of the date of this memorandum, even after commencement of litigation, Defendant has yet to provide Complainant with these values, including monthly kVA consumption required to calculate Complainant’s costs under Rate 20. Defendant essentially claims that Complainant should have known of the possibility of a claim even though it did not provide Complainant the information that would allow it to discover it.

2. Defendant continuously mistreated Complainant by failing to advise and properly disclose information regarding available rates.

As stated above, Complainant contends that Defendant has failed to act pursuant to the South Carolina Regulations and its own General Terms and Conditions. The Complainant contends that such a failure to advise Defendant or provide the Complainant sufficient information so that it could possibly calculate on its own the most cost efficient rate for its store amounts to a continuous mistreatment, and therefore the applicable statute of limitations does not begin to run until the last mistreatment occurs. While Complainant recognizes that this state has chosen not to apply the continuous treatment exception in medical and legal malpractices cases,

See Harrison v. Bevilacqua, 354 S.C. 129, 580 S.E.2d 109 (2003); *Holy Loch Distributors v. Hitchcock*, 332 S.C. 247, 503 S.E.2d 787 (Ct. App. 1998), the facts of this case are distinguishable. The facts of this case are more comparable to a continuous nuisance which the South Carolina Supreme Court held that the continuous treatment exception applies. *Hedgepath v. American Telephone and Telegraph Co.*, 348 S.C. 340, 358 S.E.2d 327, 337 (2001) (“the statute of limitations does not run merely from the original intrusion on the property and cannot be a complete bar. A new statute of limitations begins to run after each separate invasion of the property.”). Similarly, every time the Defendant failed to advise Complainant of the most efficient rate for each store; failed to provide Complainant with information that would allow it to calculate the most efficient rate on its own; and sent a monthly bill for electrical service, Defendant breached a duty owed to a Defendant and another mistreatment occurred thereby beginning a new statute of limitations. This was not a single wrong that occurred upon the application for power at each respective store, but rather a reoccurring wrong each time information required to be disclosed was withheld and each time a monthly bill was sent seeking excessive charges for service. Not only did Defendant fail to ever provide Complainant with advice or information regarding available rates, but, as previously stated, every monthly statement given to Complainant failed to provide Complainant with the monthly kVA consumption required to calculate Complainant’s costs under Rate 20. Therefore, every monthly statement and yearly summary of available rates allegedly given to the Complainant is a new basis for a cause of action. Defendant would have this Commission apply the statute of limitations in such a way that, after two years of electrical service, the Defendant would effectively be immune from a cause of action from its customers, regardless if it continued to fail to provide to its customers the information or services required by South Carolina law. This

would effectively allow Defendant to overcharge and pillage South Carolina customers and provide them with no remedy.

3. The statute of limitations cannot bar claims that could have not yet possibly arisen.

Defendant claims that at the latest, Complainant's claims for reparations were barred on May 5, 2008, two years after Defendant claims Complainant had actual notice of the existence of Rate 20. Without conceding that any of Complainant's claims for reparations for any of its stores are barred, Complainant's claims for reparations for the stores located at 631 Promenade Place and 1311 Main Street could not possibly be barred at this time, because these stores weren't even in existence and no charges had been levied. Claims that do not even exist cannot be barred. Yet Defendant contends that the statute of limitations expired two years before electrical services for these stores have even been hooked up. Such an absurdity cannot be the law.

As stated previously, "all petitions concerning unreasonable, excessive, or discriminatory charges on which reparations orders may be made must be filed with the commission and provided to the Office of Regulatory Staff within two years **from the time the cause of action accrues.**" S.C. Code § 58-27-960 (emphasis added). Defendant admits that it established an electric account with Complainant's store at 631 Promenade Place on or about October 2, 2008 and with the store at 1311 Main Street on or about July 30, 2010. Def's Answer, Paragraph 6. Given that Complainant did even have service contracts with these stores until after May 5, 2008, it is plainly impossible for its claims regarding these stores to have been barred before they have even arisen.

E. DEFENDANT SHOULD BE ESTOPPED FROM ASSERTING THE STATUTE OF LIMITATIONS

Defendant should be estopped from asserting the applicable statute of limitations because through its actions and/or its failure to act, it has induced Complainant into not investigating the availability and efficiency of alternative rates.

A defendant will be estopped to assert the statute of limitations in bar of a plaintiff's claim when "the delay that otherwise would give operation to the statute has been induced by the defendant's conduct." *Dillon County School Dist. No. Two v. Lewis Sheet Metal Works, Inc.*, 286 S.C. 207, 332 S.E.2d 555 (1985) (rev'd on other grounds). The "essential elements of estoppel as related to the party claiming the estoppel are: (1) lack of knowledge and of means of knowledge of truth as to facts in question, (2) reliance upon conduct of the party estopped; and (3) prejudicial change of position." *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001). A plaintiff asserting equitable estoppel need not show an intentional misrepresentation by the defendant, rather "[i]t is sufficient if the plaintiff reasonably relied upon the **words or conduct** of the defendant in allowing the limitations period to expire." *Dillon County School*, 286 S.C. at 219, 332 S.E.2d at 561 (emphasis added). Additionally, a defendant's silence may be the basis for an estoppel where the silence "is intended, or when it has the effect of misleading" the plaintiff. *S. Dev. Land & Gold Co. v. South Carolina Pub. Serv. Auth.*, 311 S.C. 29, 33, 426 S.E.2d 748, 751 (1993).

As stated above, Complainant contends that it did not have actual knowledge and had no reason to know that Rate 20 was even available to its stores; much less that it was the more cost efficient rate until September 2013. Even further, Complainant did not even have the "means of" determining that Rate 20 was the more efficient rate as its monthly statements while on Rate 9 did not provide its actual monthly kVA consumption, a value required to calculate Complainant's estimated costs under Rate 20. The Complainant justifiably relied on the monthly

statements provided to it that misreported that Complainant's kVA consumption was zero "0", which, if was true, would mean that Complainant's stores do not even qualify for Rate 20. *See Def.'s Motion for Judgment on the Pleadings*, Page 3. Further, the Complainant justifiably relied on a letter sent from Complainant's representative, Robert "Bo" Gdovin to "Rita" an employee of Defendant on June 20, 2006 which affirmatively requested that Complainant's store at 5070 International Blvd. be set up in the same manner as the Sam Rittenberg store which at the time had just been switched over to Rate 20. *See Letter from Bo Gdovin, June 20, 2006* attached hereto as Exhibit E. Defendant relied upon this formal request that the store at International Blvd. and the subsequently opened stores at Promenade Place and Main Street would be set up on Rate 20, the most efficient rate, which did not happen. Defendant's silence and inaction after a formal request had a misleading effect on the Complainant. Finally, the Complainant prejudicially changed its position by assuming that Defendant had provided it with all information necessary to select the most efficient rate as required by South Carolina law, and by assuming that the Defendant had acted upon its formal request to have its stores placed on the same rate as the Sam Rittenberg store in 2006. Therefore, as result of its actions and/or inactions Defendant should be estopped from asserting the applicable statute of limitations.

F. COMPLAINANT'S CLAIMS ARE NOT BARRED BY THE DOCTRINE OF LACHES

Complainant's claims are not barred by the doctrine of laches because Defendant has failed to show: (1) that Complainant unreasonably delayed in bringing these claims; (2) that the Complainant had the opportunity to act sooner; and (3) that as a result of the delay, Defendant detrimentally changed its positions and is materially prejudiced.

"Laches is neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done."

Muir v. C.R. Bard, Inc., 336 S.C. 266, 296, 519 S.E.2d 583, 598 (Ct.App.1999) (citations omitted). Under the doctrine of laches, if a party who knows his rights does not timely assert them, and by his delay, causes another party to incur expenses or otherwise detrimentally change his position, then equity steps in and refuses to enforce those rights. *Id.* at 296, 519 S.E.2d at 599. The party asserting laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice. *Id.* at 297, 519 S.E.2d at 599.

Defendant claims that Complainant has unreasonably delayed in bringing this action because in 2006 its Sam Rittenberg Store was placed on Rate 20. As stated above, while Complainant admits that it had its Sam Rittenberg store transferred to Rate 20 in 2006, Defendant has failed to provide evidence as to why that rate was switched over; the communications, if any, that occurred between the parties about the benefits of Rate 20 as proposed to Rate 9; that it provided Complainant with any advice or information regarding the calculation of Rate 20 as required by its own policies and South Carolina law; that it informed Complainant of the possibility and benefits of having Complainant's other stores switched over to Rate 20; and that this in anyway put Complainant on notice that it had a claim for reparations for being overcharged by Defendant. Also, as previously stated, Defendant did not have the "opportunity to act sooner" as Defendant did not provide essential consumption values to Complainant making it impossible to determine if it was being overcharged, and Defendant actually misrepresented these values in a way that led Complainant to believe it could not qualify for Rate 20.

Defendant actually claims that it is prejudiced by Complainant failing to bring its action until this time because since the time Defendant claims that Complainant's claims have arisen it has adjusted its rates and if the Complainant prevails on its action the Defendant "will have lost

the opportunity to set rates based upon diminished revenues.” Def.’s Motion for Judgment on the Pleadings, Page 12. The Defendant, who has been grossly overcharging the Complainant by having its stores on Rate 9 instead of the more cost efficient Rate 20, has actually claimed that it is prejudiced by overcharging and receiving approximately \$232,000 that it would not have received if Complainant had been set on and/or consulted about the appropriate rate. Defendant has not been prejudiced by Plaintiff failing to bring its action sooner, but has clearly benefitted to the tune of \$232,000 it did not earn and it did not deserve. Therefore, Complainant’s claims should not be barred by the doctrine of laches.

G. AT MINIMUM, COMPLAINANT SHOULD BE ALLOWED TO SEEK REPARATIONS FOR OVERCHARGES AND OVERPAYMENTS FOR THE PAST TWO YEARS

Questions of fact regarding when a cause of action accrued are not appropriate for a motion for judgment on the pleadings but should be determined by a fact finder at a hearing upon the merits. *See Santee Portland Cement Co.*, 299 S.C. 269, 384 S.E.2d 693. Without conceding that fact and that Complainant is not entitled to collect the total estimated collective amount of \$232,000.00 for overcharging and overpayment alleged in its Complaint, the Complainant, at minimum should be allowed to seek reparation for overcharges and overpayments for each store for the past two years from the date Complainant’s cause of action accrued in September 2013 pursuant to S.C. Code Ann. § 58-27-960.

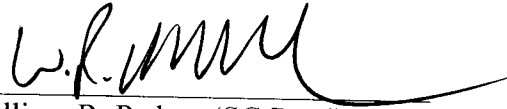
CONCLUSION

For these reasons, Complainant Southern Bread respectfully requests the Commission deny Defendant SCE&G’s Motion for Judgment on the Pleadings.

<signature page to follow>

Respectfully submitted,

FINKEL LAW FIRM LLC
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
(803) 765-2935

A handwritten signature in black ink, appearing to read 'W.R. Padget', with a long, sweeping horizontal line extending to the right.

William R. Padget (SC Bar #72579)
Attorneys for Complainant

Columbia, South Carolina
January 27, 2014.



Complaint Form

Print

Date: November 22, 2013

Complainant or Legal Representative Information:

* Required Fields

Name * Southern Bread, LLC

Firm (if applicable) Finkel Law Firm, LLC

Mailing Address * 1201 Main Street, Suite 1800; PO Box 1799 (29202)

City, State Zip * Columbia, SC 29201

Phone * 803-765-2935

E-mail * bpadget@finkellaw.com

Name of Utility Involved in Complaint: * South Carolina Electric and Gas

NOTE: If AT&T is the utility involved, please complete the attachment located at the end of this form.

Type of Complaint (check appropriate box below.) *

- | | | | |
|--|--|--|---|
| <input type="checkbox"/> Billing Error/Adjustments | <input type="checkbox"/> Deposits and Credit Establishment | <input checked="" type="checkbox"/> Wrong Rate | <input type="checkbox"/> Refusal to Connect Service |
| <input type="checkbox"/> Disconnection of Service | <input type="checkbox"/> Payment Arrangements | <input type="checkbox"/> Water Quality | <input type="checkbox"/> Line Extension Issue |
| <input type="checkbox"/> Service Issue | <input type="checkbox"/> Meter Issue | | |
| <input type="checkbox"/> Other (be specific) | | | |

Have you contacted the Office of Regulatory Staff (ORS)? * ☒ Yes ☐ No

Name of
ORS Contact: Chad Campbell

Concise Statement of Facts/Complaint: * (This section must be completed. Attach additional information to this page if necessary.)

See Attached

RECEIVED
NOV 23 2013 10
PUBLIC SERVICE
COMMISSION

Relief Requested: * (This section must be completed. Attach additional information to this page if necessary.)

See Attached

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

VERIFICATION

I, Southern Bread, LLC
Complainant's Name *

verify that I have read my complaint filed on 11/22/2013

Date *

and know the contents thereof, and that said contents are true.

Complainant's Signature *

Internal Use Only

| | |
|--------------|------|
| Processed By | Date |
| | |
| File | |

| | | |
|---------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE PUBLIC SERVICE COMMISSION |
| |) | |
| COUNTY OF RICHLAND |) | DOCKET NO.: _____ |
| |) | |
| Southern Bread, LLC, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | COMPLAINT |
| |) | |
| South Carolina Electric and Gas |) | |
| Company, |) | |
| |) | |
| Defendant. |) | |
| _____ |) | |

Complainant Southern Bread, LLC, by and through its undersigned counsel, complaining of Defendant South Carolina Electric and Gas Company, alleges as follows:

PARTIES

1. Complainant, Southern Bread, LLC, (hereinafter "Southern Bread" or "Complainant"), is a limited liability company organized and operating under the laws of the State of South Carolina and doing business in the State of South Carolina through its members, agents, servants and/or employees.

2. Defendant South Carolina Electric and Gas Company, (hereinafter "SCE&G" or "Defendant"), is a domestic corporation organized and operating under the laws of the State of South Carolina and operating as a public utility for residents and businesses of the State of South Carolina.

JURISDICTION AND VENUE

3. The Public Services Commission has jurisdiction over the parties and venue is proper under S.C. Code Ann. § 58-27-220 (Supp. 2012).

REPARATIONS

4. Upon information and belief, SCE&G's General Terms and Conditions for permanent electricity require that when two or more rate schedules for electricity are available for selection by a customer such as Complainant, SCE&G will attempt to assist the customer to a reasonable extent in determining which schedule to select.

5. South Carolina Code Ann. Regs. 103-330 (2013) states that a provider of electricity to a new residential or commercial customer must provide to said customer within sixty days of application of service a clear and concise explanation of the available rate schedules for the class of service which for the customer applied. In addition, when more than one rate schedule is reasonably available to a customer, a provider of electricity must also provide a clear and concise summary of the existing rate schedules applicable to the customer's class of service at least once a year.

6. Complainant contracted with SCE&G to have permanent electricity provided to each of its following Panera Bread stores on the approximate dates:

- a. 6080 Garners Ferry Road, Columbia, SC – on or about November 17, 2004;
- b. 2000 Sam Rittenberg Blvd., Charleston, SC – on or about November 17, 2005;
- c. 5070 International Blvd., North Charleston, SC - on or about June 8, 2006;
- d. 631 Promenade Place, Columbia, SC - on or about September 15, 2008; and
- e. 1311 Main Street, Summerville, SC - on or about November 8, 2010.

7. Upon information and belief, at the time of contracting for permanent electricity for each respective store, Defendant had a duty and obligation to present to its customer the option of selecting between SCE&G rate schedule 9 and rate schedule 20 and should have made efforts to

assist Southern Bread in determining the proper rate in accordance with Defendant SCE&G's General Terms and Conditions.

8. At no time during the contracting for permanent electricity or since did SCE&G provide any meaningful assistance, explanation, clarification, or summary of the rate schedules available to Southern Bread regarding the aforementioned Panera Bread stores in violation of Defendant SCE&G's General Terms and Conditions and South Carolina Code Ann. Regs. 103-330:

9. Further, upon information and belief, SCE&G failed to effectively provide Southern Bread the option to meaningfully select between rate schedule 9 and rate schedule 20, but instead selected a specific rate schedule by default without providing Southern Bread meaningful information to make an informed decision regarding the appropriate rate.

10. As a result of SCE&G's failure to assist, consult, explain, and/or recommend to Southern Bread which rate schedule to select, or effectively provide Southern Bread the option to select between rate schedules, four of Southern Bread's Panera Bread stores were arbitrarily placed on SCE&G's rate schedule 9 (the stores at 6080 Garners Ferry Road, 5070 International Blvd., 631 Promenade Place, and 1311 Main Street) and, at a later time, one store was placed on SCE&G's rate schedule 20 (the store at 2000 Sam Rittenberg Blvd).

11. Upon information and belief, SCE&G's rate schedule 9 is an improper and inefficient rate schedule for the four Panera Bread stores owned by Southern Bread as compared to rate schedule 20. Southern Bread's four stores have been overcharged and have been overpaying for electricity between the time they entered into their respective permanent electricity contracts with SCE&G until September 2013 when Southern Bread became aware the rate schedules were improper and the four stores were converted to rate schedule 20.

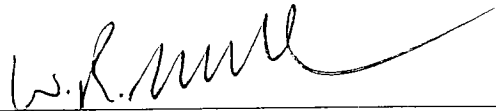
12. As a direct and proximate result of SCE&G's failure to follow its own General Terms and Conditions and South Carolina law, four of Southern Bread's Panera Bread stores were arbitrarily and improperly placed on SCE&G's rate schedule 9 resulting in the overcharging and overpayment for electricity in the *estimated* collective amount of \$232,000.00.

WHEREFORE, Southern Bread prays that this Commission order the following:

- a. Reparations be paid to Southern Bread for past overpayments made by Southern Bread to SCE&G; and
- b. Any such other and further relief as the Commission deems just and proper.

Respectfully submitted,

FINKEL LAW FIRM LLC



William R. Padget (SC Bar No.: 72579)

Finkel Law Firm LLC

1201 Main Street, Suite 1800

Post Office Box 1799

Columbia, South Carolina 29202

(803) 765-2935

Attorneys for the Complainant Southern Bread, LLC

Columbia, South Carolina
November 22, 2013

SOUTH CAROLINA PUBLIC SERVICE COMMISSION

HEARING EXAMINER DIRECTIVE

DOCKET NO. 2013-435-E

DECEMBER 5, 2013

Josh Minges
Hearing Examiner

DOCKET DESCRIPTION:

Southern Bread, LLC, Complainant/Petitioner v. South Carolina Electric & Gas Company,
Defendant/Respondent

MATTER UNDER CONSIDERATION:

Motion for Revised Filing Schedule and Hearing Date by the Parties

HEARING EXAMINER ACTION:

The parties in this Docket have requested a revised filing schedule and hearing date. The request is granted. The new dates, as requested, are as follows:

| | |
|--|------------------------------|
| Answer to Complaint: | January 3, 2014 |
| All Discovery Completed By: | February 7, 2014 |
| Complainant's Direct Testimony: | February 26, 2014 |
| All Other Parties' Direct Testimony: | March 12, 2014 |
| Complainant's Rebuttal Testimony: | March 19, 2014 |
| All Other Parties Surrebuttal Testimony: | March 26, 2014 |
| Hearing Date: | April 14, 2014 at 10:00 A.M. |

Summary of Non-Residential Electric Rates

Page 1 of 2

RATE 3, Municipal Power Service, is available to municipal customers for municipally owned and operated facilities including public buildings and pumping stations. This rate requires a written contract for a minimum term of 10 years.

RATE 9, General Service, is available to commercial, industrial, religious and charitable organizations including temporary and large construction service. It is an energy rate with a KVA demand charge for all KVA in excess of 250 during the billing months of June through September.

RATE 10, Small Construction Service, is available as a temporary single-phase-only service to buildings under construction.

RATE 11, Irrigation Service, is a time-of-use rate available to drive pumps and systems supplying water for irrigation purposes only. Service requires a written contract with a minimum term of 10 years.

RATE 12, Church Service, is available to recognized churches. Service is not available under this rate for churches offering activities of a commercial nature such as day care, camps or recreational activities.

RATE 13, Municipal Lighting, is available to municipal customers for municipally owned and operated facilities for lighting streets and other public places and for operating signal systems. This rate requires a written contract for a minimum term of 10 years.

RATE 14, Farm Service, is available for use on farms for producing but not processing agricultural, dairy, poultry, and meat products. Motors rated in excess of 20 HP cannot be served under this rate.

RATE 15, Supplemental and Standby Service, is available to provide Qualifying Facilities with service when their equipment is unavailable or when they require power above that normally generated by such equipment.

RATE 16, General Service Time-of-Use, is a seasonal time-of-use rate available to customers having an on-peak demand of less than 1,000 KW. This is an energy-only rate.

RATE 20, Medium General Service, is available as a combination demand and energy rate for customers having a minimum billing demand of 75 KVA. This rate requires a written contract for a minimum term of five years.

continued

RATE 21, General Service Time-of-Use Demand, is a seasonal time of use rate available to customers having a minimum contract demand of 50 KVA and a maximum demand of less than 1,000 KVA. This is a combination demand and energy rate. This rate requires a written contract for a minimum term of five years.

RATE 22, School Service, is available to non-boarding schools with grades K-12. Service is not available under this rate for schools offering activities of a commercial nature such as day care, camps or recreational activities.

RATE 23, Industrial Power Service, is available as a combination demand and energy rate to industrial customers having a minimum billing demand of 1,000 KW. This rate requires a written contract for a minimum term of five years.

A RIDER TO RATES 20 AND 23 FOR COOL THERMAL STORAGE is available to encourage removal of air conditioning load from the system peak.

RATE 24, Large General Service Time-of-Use, is a seasonal on-peak and off-peak consumption (KWH) and demand (KW) rate available to customers having a minimum billing demand of 1,000 KW. This rate requires a written contract for a minimum term of five years.

A RIDER TO RATES 23 AND 24 FOR INTERRUPTIBLE SERVICE is available for customers willing to be exposed to interruption during certain hours up to a total number of annual hours, which offers a credit against the demand charge.

RATE 28, Small General Service Time-of-Use Demand, is an experimental rate that bills a seasonal on-peak KW demand charge and a monthly off-peak KW demand charge. The maximum on-peak monthly billing demand for this rate is 100 KW. This rate also bills an energy charge for on/off-peak KWH. It is limited to a maximum of 25 non-net metering customers and requires a written contract for a period of not less than one year.

LIGHTING RATES, Various mercury vapor, metal halide and high pressure sodium fixtures are available for flood, street and private overhead lighting. These rates require written contracts.

Copies of rates are available from any SCE&G business office or online at sceg.com.



SERVICE FOR
SOUTHERN BREAD LLC
6080 GARNERS FERRY RD STE C
COLUMBIA SC 29209-1396

of 2

JUE
.50

www.sceg.com

**BUSINESS CUSTOMER SERVICE
24 HOURS A DAY**

1-866-543-7234, toll-free

EMERGENCY SERVICE - 24 HOURS A DAY

Gas leaks, downed lines or power outages

1-888-333-4465, toll-free

STATEMENT DATE

Oct 17 2012

Electric Usage History - kWh



| | Oct 11 | Oct 12 |
|------------------------|------------|------------|
| kWh used | 34000 | 42160 |
| Avg regional temp | 70 | 71 |
| Days in billing period | 29 | 32 |
| Cost | \$3,839.39 | \$5,165.58 |

Gas Usage History - Therms



| | Oct 11 | Oct 12 |
|------------------------|----------|----------|
| Therms used | 677 | 804 |
| Avg regional temp | 70 | 71 |
| Days in billing period | 29 | 32 |
| Cost | \$705.37 | \$773.21 |

For a complete set of tools to analyze your usage,
log on to sceg.com.

PLEASE KEEP THIS PORTION FOR YOUR RECORDS.

ACCOUNT SUMMARY

| | |
|-------------------------------------|-------------|
| Previous Bill Amount | \$ 7,215.34 |
| Payment Received 10/11/12 THANK YOU | -7,215.34 |
| Current Charges | 6,354.50 |

Amount Due on 11/7/12 \$6,354.50

A late payment charge of 1.5% may be added to any balance remaining 25 days after billing.
Any remaining balance after 5:00 PM on 11/14/12 is subject to late payment charges.

SUMMARY OF CURRENT CHARGES

| | |
|------------------------------|-------------------|
| Electric Charges | \$5,527.17 |
| Gas Charges | 827.33 |
| Total Current Charges | \$6,354.50 |

CURRENT CHARGES

Electric Charges

RATE PLAN
009 - General Service

METER READING
Electric Meter read on 10/15/12 at 11:46 am
(Next scheduled read date 11/12/12)

| METER NO. | BILLING PERIOD | DAYS | CURRENT | PREVIOUS | CONSTANT | KWH | KW | KVA |
|---|-------------------|------|---------|----------|----------|--------|-------------------|-----|
| 001140056 | 09/13/12-10/15/12 | 32 | 31761 | 30707 | 40 | 42,160 | 0 | 0 |
| Basic Facilities Charge | | | | | | | 18.75 | |
| First 3,000 kWh X (\$ 0.122250 + \$ 0.001880 WNA) | | | | | | | 372.39 | |
| Next 39,160 kWh X (\$ 0.113760 + \$ 0.001880 WNA) | | | | | | | 4,528.46 | |
| Franchise Fee 5.00% paid to the City of Columbia | | | | | | | 245.98 | |
| State Sales Tax at 7.00 % | | | | | | | 361.59 | |
| Total Electric Charges | | | | | | | \$5,527.17 | |

**Posting
Summary**

SERVICE FOR 6080 GARNERS FERRY RD STE C

| ACCOUNT NUMBER | STATEMENT DATE | AMOUNT DUE | DATE DUE |
|----------------|----------------|------------|----------|
| | 10/17/12 | \$6,354.50 | 11/5/12 |



0000000019482 09 BD 291406692

SOUTHERN BREAD LLC
DBA PANERA BAKERY CAFE
126 N FOREST BEACH CT
HILTON HEAD ISLAND SC 29928-6403

Thank you for using SCE&G's Electronic Banking Service.
Your bank draft is set up for:

Wachovia





www.sceg.com

CUSTOMER SERVICE

1-866-543-7234

STATEMENT DATE

Oct 17 2012

of 2

DUE

1.50

Payment Options

By Mail: Pay by check or money order in the enclosed envelope.

Online: Visit sceg.com to pay directly from your bank account or credit card.

By Phone: Call 1-800-450-9160, toll-free, 24 hours a day to pay using your credit card, debit card or directly from your bank account. There is a fee of \$3.50 per transaction that BillMatrix receives for providing this service. Additional limitations may apply.

Business Office: Visit an SCE&G business office located near you to pay in person. This is a free service.

EAST COLUMBIA, 7748 GARNERS FERRY RD, COLUMBIA SC

Authorized Payment Agencies:

Visit an authorized payment location near you to pay in person. There is no fee associated with service at an authorized payment location.

THE MAILROOM, 1505 CHARLESTON HWY, WEST COLUMBIA SC 29169

Unauthorized Payment Agencies:

Additional payment centers may exist in your area that are not SCE&G authorized payment locations. While these unauthorized locations may accept your SCE&G payment, they will charge a fee for doing so, and your payment will be delayed in reaching SCE&G.

Gas Charges

RATE PLAN

033 - Medium General Svc

METER READING

Gas Meter read on 10/15/12 at 10:51 am
(Next scheduled read date 11/12/12)

METER NUMBER

001024413

| BILLING PERIOD | DAYS | CURRENT | PREVIOUS | P-COMP | USAGE(CCF) | BTU FACTOR | THERMS |
|--|------|---------|----------|-----------|------------|------------|-----------------|
| 9/13/12 - 10/15/12 | 32 | (8142 | - 7442) | X 1.13374 | = 794 | X 1.0120 | = 804 |
| Basic Facilities Charge | | | | | | | 27.17 |
| Base - 804 Therms X \$ 0.882110 | | | | | | | 709.22 |
| Franchise Fee 5.00% paid to the City of Columbia | | | | | | | 36.82 |
| State Sales Tax at 7.00 % | | | | | | | 54.12 |
| Total Gas Charges | | | | | | | \$827.33 |

Payment experience reported to credit agencies. SCE&G reports payment experience of our commercial customers to Dun & Bradstreet and other similar agencies.

Electronic check conversion. When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

Southern Bread, LLC; dba

Panera Bread, LLC

- 126 North Forest Beach, Hilton Head Island, SC 29928
- 843-785-9329

FAX
803
933
8045

Dear Rita,

As per our Telephone discussion today Tuesday, June 20, 2006, we need both Gas and Electrical Service Provided to our New Panera Bread Location. The new location address will be, McCall Center 5070 International Parkway, suite 101 North Charleston, SC 29418.

We currently have an existing location in West Ashley: Address is 2000 Sam Rittenberg Ave, Charleston, SC 29407. We need gas and electric to be set up in the same way. Billing Address is 126 North Forest Beach, Hilton Head Island, SC 29928

If you have any questions, please do not hesitate to call me on my mobile: 803-467-1327

Sincerely,



Robert Gdovin
Franchisee/Partner

- FED TAX ID #:

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